

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4256 of 1986

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE C.K.THAKKAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

D K MARU

Versus

STATE OF GUJARAT

Appearance:

MR SV PARMAR for Petitioners

M/S PATEL ADVOCATES for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI and
MR.JUSTICE C.K.THAKKAR

Date of decision: 21/02/2000

C.A.V. JUDGEMENT: (Per D.M. Dharmadhikari, C.J.)

1. This is a public interest litigation filed by a Cooperative Society of agriculturists, belonging to Scheduled Castes and Tribes of Gujarat and registered under the Gujarat Cooperative Societies Act, whereby the decision taken by the Gujarat Government, contained in the impugned Circular dated 7.8.1986, sent to the Collectors of Various Districts of Gujarat to reserve all surplus lands vesting in the Government under the Gujarat Agricultural Lands Ceiling Act, 1960 for distribution to land oustees of Madhya Pradesh and Maharashtra as a result of submergence of their lands under Narmada Water Reservoir Project, has been challenged.

2. To appreciate the nature of challenge made by the petitioner-Cooperative Society of Scheduled Tribes and Scheduled Castes, it is necessary to reproduce the contents of the impugned Circular, which, upon its translation into English, reads as under :

"

NO.ICH/1078/2239-Chh. Dated 7.8.1986.

To,

Collector,
Bhavnagar, Rajkot, Ahmedabad, Mehsana,
Banaskantha, Kutchchh, Kheda.

Sub :- Gujarat Agricultural Lands
Ceiling Act, 1960.

Allotment of surplus lands
to rehabilitate
agriculturists affected by
Narmada Water Reservoir
Project:

On the above subject (you are)
informed that (Government) has decided to
allot lands declared surplus under the
Gujarat Agricultural Lands Ceiling Act,
1960 to agriculturists of Madhya Pradesh
and Maharashtra whose lands have been
submerged because of implementation of
Narmada Water Reservoir Project. Earlier
under Government letter of even number
dated 13.4.1977, it was decided to reserve
such lands of Vadodara, Bharuch, Surat,
Panchmahals and Surendranagar Districts for

this purpose. In continuation of that (letter) it is also decided to reserve lands of Bhavnagar, Rajkot, Ahmedabad, Mehsana, Banaskantha, Kuchchh and Kheda Districts (Undersigned is) directed to instruct you not to allot on permanent basis whatever lands that be declared as surplus lands in your district under the abovesaid Act, till orders for disposal of such lands are issued hereafter by Government. (You are) also requested to communicate this (instructions) to all the concerned officers immediately "

3. This petition was filed in the year 1986 when the above impugned Circular came to be issued.

4. The State Government, through its Revenue Department, in their reply on affidavit, has stated the reason for supporting the decision of the Government contained in the impugned circular. The relevant part of their reply states that under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 (for short, "The Act"), 237000 acres of land was declared surplus, out of which possession of land, admeasuring 145000 acres has been taken by the State Government. Out of the land, of which possession has been taken, 107000 acres of land has already been distributed. The remaining 26000 acres of land was given on annual basis to different persons.

5. It is stated that the Government of Gujarat is bound by the Award of the Narmada Water Dispute Tribunal, which provides that Government of Gujarat will have to establish rehabilitation villages in Gujarat in Irrigation command area of the Sardar Sarovar Project. The agriculturists affected by the Project include 4520 and 1118 families residing in Madhya Pradesh and Maharashtra, respectively. As per the N.W.D.T., land going under submergence of the person should be compensated not in terms of money, but equal area of land is to be given to the oustees. It is in the above background and N.W.D.T. Award that the Government of Gujarat took a decision to reserve surplus lands available in 12 Districts of the command area of Sardar Sarovar Project for distribution to the families affected by the Project. It was stated in the affidavit-in-reply that the provisions of Section 29 of the Act were proposed to be amended by the State Legislature of Gujarat for resettlement of land oustees of the Project

by distributing them surplus land available with the State of Gujarat.

6. Learned counsel appearing for the State pointed out that the second proviso to Section 29 of the Act permits the State Government by notification in the Official Gazette to reserve specified land in the specified local areas for distribution to class of persons, who are land oustees of any development Project approved by the State Government and as land oustees to be resettled.

7. Since the provisions of Section 29 of the Act, with the second proviso thereunder, have come up for construction before us on the arguments advanced at the Bar, it is necessary to produce sub-section (1) of Section 29 in full :-

" 29. Allotment of land vesting in Government.-(1) Subject to the provisions of sub-section (1A), land other than grazing land, which vests in the State Government under section 21 or 26 shall be allotted in accordance with the rules made in that behalf under this Act on payment of occupancy price payable therefor in accordance with such rules in the following order of priority :-

(ii) co-operative farming society, where it is -

(a) a cooperative joint farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such person;

(b) a cooperative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;

(iii) agricultural labourers and landless persons;

(iv) small holders :

Provided that the extent of land to be allotted to a cooperative farming society

referred to in clause (ii) together with the land held as owner or tenant individually by the members thereof shall not exceed an area equal to the ceiling area multiplied by the number of members thereof :

Provided further that the State Government may, by notification in the Official Gazette, give, in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class of persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government, have been displaced, and require to be re-settled
...."

8. On behalf of the State, two notifications dated 23rd July, 1996, published in the Gujarat Government Gazette Extraordinary dated 1st of August, 1996 and notification dated 30th November, 1996, published in the Gujarat Government Gazette Extraordinary dated 30th of November, 1996 have been placed on record. The two notifications purported to have been issued in exercise of second proviso to Section 29(1) of the Act also need reproduction as under :-

" ...

Sachivalaya, Gandhinagar, 23rd July, 1996.

... ..

In exercise of the powers conferred by the second proviso to sub-section (1) of section 29 of the Gujarat Agricultural Land Ceiling Act, 1960 (Gujarat XXVII of 1961) the Government of Gujarat hereby gives in relation to the areas within the limits of all the Talukas of Vadodara District the first priority specified in the said sub-section (1) of section 29 to the class of persons specified in the Schedule appended hereto as they require to be settled.

SCHEDULE

The oustees of Narmada project as defined in Narmada and Water Resources Department, Government Resolution NO.RHB/1085/D, dated 1st November, 1985 as amended from time to time "

" ...

Sachivalaya, Gandhinagar, 30th November, 1996.

... ..

In exercise of the powers conferred by the second proviso to sub-section (1) of Section 29 of the Gujarat Agricultural Land Ceiling Act, 1960 (Gujarat XXVII of 1961), the Government of Gujarat hereby gives in relation to the areas within the limits of all the Talukas of Panchmahals, Kheda, Bharuch, Surat, Banaskantha and Sabarkantha District, the first priority specified in the said sub-section (1) of section 29 to the class of persons specified in the Schedule appended hereto as they require to be settled.

SCHEDULE

The oustees of Narmada Project as defined in Narmada and Water Resources Department, Government Resolution No.RHB/1085/D dated 1st November, 1985 as amended from time to time"

9. The learned counsel appearing for the petitioner-Society has raised two important questions one of the legislative competence of the State Legislature of Gujarat in inserting second proviso to Section 29 to make available surplus land under the Act to land oustees of the State of Madhya Pradesh and Maharashtra and the other question on the interpretation of second proviso to Section 29.

10. In support of the first ground urged, it is contended that under the provisions of the Act, the surplus land vesting in the State under the Act has to be

distributed to the agriculturists or land oustees, who are residents of Gujarat and in accordance with the priorities provided in sub-section (1) of Section 29, in which cooperative societies of Scheduled Tribes and Castes are to be given priority. It is argued that in providing for distribution of surplus land vesting in the State under the Act to the land oustees of Madhya Pradesh and Maharashtra, the State Legislature has tried to exceed its legislative power by making legislation in relation to the land oustees of Maharashtra and Madhya Pradesh, which is impermissible under the provisions of the Constitution, particularly the various legislative Lists contained in the Seventh Schedule of the Constitution.

11. The argument, at first blush, appears attractive, but, on careful scrutiny, has no substance. As has been stated on behalf of the State, there has been no extra-territorial operation given to the Act by enacting the second proviso to sub-section (1) of Section 29. The second proviso, permitting the State Government to allot certain surplus lands to land oustees of Madhya Pradesh and Maharashtra, has no extra-territorial operation in relation to any land beyond the territory of the State of Gujarat. The surplus land of Gujarat has to be distributed to land oustees affected by Government Project, i.e. the farmers and families of Maharashtra and Madhya Pradesh. In Distribution of surplus land, vesting in the State, to the families, affected by the Project, in Madhya Pradesh and Maharashtra, it cannot be held that the State Legislature of Gujarat has tried to trench upon the legislative field either of the State Legislature of any other State or the Central Legislature. There cannot be any discrimination in distribution of land between land oustees, who are residents of Gujarat, and land oustees of Madhya Pradesh and Maharashtra for the purpose of resettlement of families and farmers affected by the Sardar Sarovar Project. Under the Award of the N.W.D.T., the families affected in the State of Gujarat, Maharashtra and Madhya Pradesh are to be treated equally. The argument, therefore, advanced of want of legislative competence by the petitioners, therefore, has to be rejected.

12. The next contention urged on behalf of the petitioners is that the second proviso to Section 29(1) is repugnant to the main provision. The main provision contained in sub-section (1) of Section 29 and the first proviso therein provides for distribution of land with priorities fixed, in which Cooperative Societies of SCs. and STs. have to be given preference for allotment. It

is submitted that the second proviso permitting reservation of certain surplus land for allotment to land oustees of Government Project eats up completely the main provision giving priority to cooperative Societies of SC, ST, agriculturists and other agriculturists residing in the State of Gujarat. It is submitted that the second proviso to Section 29(1) of the Act, therefore, deserves to be harmoniously construed or is to be declared ultra vires.

13. A careful examination of the provisions contained in Section 29(1) and two provisos thereunder makes the intention of the Legislature clear that the second proviso is not a proviso as understood in the strict sense, but is in the nature of a non-obstante clause.

14. The learned counsel appearing for the petitioners is right in his submission that :-

"... The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment "

(Kedarnath Jute Manufacturing
Company Limited v. Commercial Tax
Officer, AIR 1996 SC 12).

"... To read a proviso as providing something by way of an addendum or as dealing with a subject not covered by the main enactment or as stating a general rule as distinguished from an exception or qualification is ordinarily foreign to the proper function of a proviso "

(C.I.T. Mysore v. Indo-Mercantile
Bank, AIR 1959 SC 713).

But, as has been explained :-

"... The insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before "

(See "Principles of Statutory
Interpretation", Seventh Edition by
Justice G.P. Singh, Chapter 3

sub-paragraph (f) at pages
166-167).

15. The second proviso to Section 29(1) for consideration before us starts with use of words "... provided further" The use of the expression "provided further" is a clear indication that what follows thereafter is in the nature of a fresh enactment or the words 'provided further' can be construed as non-obstante clause, i.e. notwithstanding anything contained in the main provision of Section 29. Learned author Justice G.P. Singh in his book at page 167 quotes a decision of the Supreme Court of the United States, which supports the construction we propose to put on the second proviso. The relevant part of the decision of the Supreme Court of the United States reads :-

"... It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them, to precede their proposed amendments with the term 'provided' so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater significance than would be attached to the conjunctive 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences...."

(emphasis supplied)

16. Maxwell on "The Interpretation of Statutes", Twelfth Edition, at pages 190-191 states as under :-

"... If, however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect.

If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that "it speaks the last intention of the makers.""

17. Taking assistance of the settled canons of construction and particularly in view of the language

employed in the second proviso and in the context in which it appears in the said Section 29, we are of the opinion that the second proviso, though framed as a proviso, is, in substance, a fresh enactment, adding to and not merely qualifying what goes before.

18. As has been explained on behalf of the State Government, as a result of large number of affected families in Gujarat, Maharashtra and Madhya Pradesh, because of Sardar Sarovar Project undertaken by the State of Gujarat, and as a result of the Award of the Narmada Water Disputes Tribunal, it had become necessary for the State of Gujarat to reserve certain land in certain areas for resettlement of farmers and families as land oustees and such land oustees have to be treated at par irrespective of whether they are residents of one or other State. The enactment contained in the second proviso to sub-section (1) of Section 29 is not only a valid piece of legislation, but is intended for the benefit of public and public interest is served thereby. We do not find that this petition has any substance as a public interest litigation and deserves grant of any of the directions in favour of the members of the petitioner-Society, who are the Scheduled Castes and Scheduled Tribes of Gujarat.

The petition is dismissed. Rule is discharged, but, in the circumstances, without any order as to costs.

(apj)